IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE A.K.BASHEER

WEDNESDAY, THE 5TH SEPTEMBER 2007 / 14TH BHADRA 1929

MACA.No. 549 of 2006

OPMV.540/2002 of MOTOR ACCIDENT CLAIMS TRIBUNAL, KASARAGOD

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PETITIONER/APPELLANT

BRANCH MANAGER,
NATIONAL INSURANCE COMPANY LTD.,
BRANCH OFFICE, P.B.NO.39,
HIGH LANE PLAZA, M.G.ROAD, KASARAGOD.

BY ADV. SRI.RAJAN P.KALIYATH

RESPONDENTS:

1. C.H.ABDUL NAZER,
SON OF MOIDEEN KUNHI, CHAYINTADI HOUSE,
CHERKKALA, CHENGALA POST,
KASARAGOD TALUK.

2. MUJEEB RAHIMAN.U,
SON OF UMBU, RESIDING AT BEKAL,
PALLIKKARA POST, KASARAGOD DISTRICT.

BY ADV. SRI.T.K.VIPINDAS

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 05/09/2007, ALONG WITH MACA NO. 1300 OF 2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.S.RADHAKRISHNAN & A.K.BASHEER, JJ.

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M.A.C.A.No.549 & 1300 OF 2006

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Dated this the 5th day of September, 2007

JUDGMENT

Radhakrishnan, J

Both these appeals arise out of the award in O.P.(MV) No.540/2002 of the Motor Accidents Claims Tribunal, Kasaragod. MACA 1300/06 is preferred by the claimant claiming enhanced compensation and MACA 549/06 is filed by the Insurance Company disputing their liability. Appellant in MACA 1300/06 filed O.P.(MV)540/02 claiming an amount of Rs.6,00,000/- as compensation for the injuries sustained to him in a road accident occurred on 21.11.2001 at about 2.30 pm at Kaniyadukkam in Kasaragod district. Claimant stated that on 21.11.2001, while he was travelling in a motor cycle bearing No.KL.14C/1730, another motor cycle bearing Registration No.KL-14B/2531 came in the opposite direction in a rash and negligent manner, hit the motor cycle in which the petitioner was travelling and he felled down sustaining serious injuries. He was taken to Unity Health Complex,

Mangalore and treated there as an inpatient. According to the claimant, the accident has occurred only due to the negligent driving of the rider of the motor cycle bearing Registration No.KL-14B/2531 who died while he was in the hospital. The first respondent was the owner of that motor cycle which was insured with the 2nd respondent, the appeallant in MACA 549/06. On the side of the petitioner, the petitioner was examined as PW1 and he has adduced Exts.A1 to A8 documents. On the side of the respondent/Insurance Company, Exts.B1 and B2 were produced and no oral evidence was adduced.

2. The Tribunal awarded a total compensation of Rs.2,90,271/- for the injuries sustained by the claimant. The contention of the Insurance Company that at the time of the accident the rider of the motor cycle was a minor was rejected, since no acceptable evidence was adduced. Tribunal held that both the respondents are jointly and severally liable for the amount awarded.

3. Counsel appearing for the claimant prays for enhancement of the amount on all the heads. An amount of Rs.4,500/- was awarded for loss of income. It was stated in Ext.A8, salary certificate, that he was employed as a Class I PWD Contractor and earning a monthly income of Rs.15,000. But this document was not marked and proved in manner as required by law. Therefore, in the absence of any reliable evidence in this regard, the Tribunal fixed Rs.1,500/- as his monthly income. Taking into consideration of the entire circumstances, we are of the view that an amount of Rs.1,500/- fixed by the Tribunal on the lower side and we fix it at Rs.3,000/-. Therefore, on that head the claimant is entitled to get an additional compensation of Rs.4,500/-. For pain and suffering, the Tribunal awarded Rs.8,000/- considering the fact that he was in hospital for 49 days and he has to undergo two surgeries. The amount awarded by the Tribunal is not adequate. We are of the view that an amount of Rs.25,000/- would be adequate in that head. For disfigurement, the

Tribunal awarded Rs.5,000/-. We have perused photograph of the claimant which was produced before the Tribunal. The disfiguration of the face may affect his future marriage proposals. The claimant is aged 25 years and he is a handsome youth. Therefore, we are of the view that an amount of Rs.50,000/- would be adequate in that head. Claimant is therefore entitled to get an additional compensation of Rs.71,500/- as interest at the rate of 9% per annum from the date of application. In the circumstances, MACA 1300/06 is allowed as above granting the petitioner the above mentioned amount as additional compensation.

4. We may now consider MACA 549/06 filed by the Insurance Company. Insurance Company has raised a contention that the vehicle bearing Reg.No.KL-14B 2531 was driven by a minor on the date of accident. Reference was also made to the FIR and the report to show that Ashraf Ali, the driver of motor cycle was only 17 years on the date of accident. We find that in spite of issuing notice by this court,

there is no appearance on behalf of the owner of the vehicle. In the entire facts and circumstances, we feel that an opportunity be given to the Insurance Company to establish that contention. We are therefore inclined to remand the matter back to the Tribunal to decide as to whether the Ashraf Ali was minor on the date of the accident. We are making it clear that we are remanding this matter only for that purpose. Claim for compensation amount has attained finality by virtue of the order in MACA 1300/06. In such circumstances, MACA 549/06 is allowed and the matter is remanded back to the Tribunal to decide the question as to whether Ashraf Ali was minor on the date of accident and whether he held a valid driving licence on the date of accident.

The counsel appearing for the appellant/Insurance Company submitted that he had filed an application seeking direction to produce driving licence i.e., I.A.1390/04, Tribunal will consider that application also. Insurance company shall

deposit the amount within a period of two months. It is open to the owner of the vehicle and Insurance Company to adduce further evidence before the Tribunal. Tribunal would pass final orders within four months from the date of receipt of a copy of this judgment.

K.S.RADHAKRISHNAN, JUDGE

A.K.BASHEER, JUDGE

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